IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITON NO. 1418 OF 2007

Vijaysinh M. Bhatia ..Petitioner

Vs.

Mr. Haren Thanawalla and anr. ..Respondents

Mrs. Majula Rao for petitioner.

Mr. Brijesh Upadhyay i/by M/s. Purnanand and Co. for respondent no.1.

Mr. P.A. Pol, APP for State.

CORAM: B.H. MARLAPALLE,J.

Reserved on : August 21, 2007.

Pronounced on : August 24, 2007.

P.C.:

1. Heard Mrs. Rao the learned counsel for the petitioner and Mr. Brijesh Upadhyay the learned counsel for the respondent no.1. The learned APP appears for the State.

2. This is a writ petition filed under Article 227 of the Constitution invoking the inherent powers of this court under Section 482 of Cr.P.C. so as to quash and set aside the process issued against the petitioner in C.C. No.3850/S/2002 by the learned

Additional Chief Metropolitan Magistrate, 23rd Court

at Esplanade, Mumbai on 30/3/1999.

3. The present respondent no.1 originally filed Criminal Case No.956/S/1999 before the Metropolitan Magistrate at Mumbai on 4/3/1999 under Section 138 of the Negotiable Instruments Act, 1881 (for short the Act) and verification was done under Section 200 of Cr.P.C. on the very same day. Issue process order was passed on 30/3/1999 under Section 138 of the Act. On or about 2/3/2002 i.e. after three years from the date of the order of issuance of process, the petitioner filed an application before the learned Metropolitan Magistrate for recall of process on the ground that he had submitted his resignation from the post of Director of the accused no.1-company and the said resignation was accepted on the same date. The Company had forwarded Form 32 to the Registrar of Companies on 27/1/1999 intimating his resignation. After the Apex Court in its judgment in the case of Adalat Prasad vs. Rooplal Jindal [2004 (4) Mh.L.J. 274] held that the trial court had no powers to recall the process issued by it, the petitioner approached this court in Criminal Writ Petition No.1933 of 2004

and prayed for quashing of the proceedings in the pending complaint which was subsequently re-registered as C.C. No.3850/S/2002. The petition was admitted on 21/10/2004. However, in view of the decision of this court in the case of V.K. Jain vs. Pratap V. Padode [2005 (3) Mh.L.J. 748] the petition was allowed to be withdrawn on 31/7/2006 with liberty to the petitioner to approach the Sessions Court by filing a revision application under Section 397 of Cr.P.C. The petitioner filed Criminal Revision Application No. 756 of 2007 and it was rejected on 13/7/2007 and, therefore, this petition in the second round.

4. Mrs. Rao the learned counsel for the petitioner submitted that the petitioner ceased to be the Director of the accused no.1-company as on 31/10/1998. The cheques were dishonoured on or about 13/1/1999. The petitioner had ceased to be the Director of the accused no.1-company and on the date the cheques were presented by the complainant for encashment he was not connected with the day to day management or administration of the accused no.1-company. She further submitted that both the cheques were post-dated and, therefore, when they were

forwarded to the complainant vide letter dated 10/8/1998, they could be treated only as the bills of exchange and they could not be treated to be the cheques till the day scribed on both the cheques and, therefore, the petitioner cannot be liable to face prosecution. As per the learned counsel for the petitioner the cause of action to file the complaint arose only after 15 days from the receipt of the statutory notice issued by the complainant and that notice is dated 18/1/1999 and thus cause of action to file the complaint would arise 15 days after the notice dated 18/1/1999 was received and on which date the petitioner had no concerned with the accused no.1-company. She also submitted that in the complaint filed by the complainant a bald allegation has been made that the petitioner was responsible and in-charge of the administration and/or management of the accused no.1-company. In support of these contentions the learned counsel placed reliance on the following decisions of the Supreme Court:-

(a) Shri Ishar Alloy Steels Ltd. vs. Jayaswals NECO Ltd. [2001 (2) Supreme 61].

(b) Ashok Yeshwant Badave vs. Surendra Madhavrao Nighojakar and anr. [2001 (2) Supreme 340].

(c) S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and anr. [(2005) 8 SCC 89].

(d) Everest Advertising (P) Ltd. vs. State Govt. of NCT of Delhi and ors. [(2007) 5 SCC 54].

(e) K. Srikanth Singh vs. North East Securities Ltd. and anr. [Criminal Appeal No.919 of 2007 (arising out of SLP (Cri) No.5710 of 2006) decided on 20/7/2007]

. In addition she has also referred to a recent decision of this court in the case of Amit Mohan Inder Mohan Sharma vs. M/s. Mamta Agency and ors. [2007 ALL MR (Cri) 1246].

5. The learned counsel for the original complainant, on the other hand, has opposed this petition and submitted that when the cheques were

forwarded by the accused no.1-company to the complainant, the petitioner was the Chairman and Managing Director of accused no.1-company and the complaint filed by the complainant has sufficiently stated about the petitioner being responsible for the management and administration of the accused no.1-company on the date the cheques were drawn and forwarded to the complainant in discharge of the existing debt or legally enforceable liability. He has placed reliance on the following decisions of the Supreme Court:-

(a) S.V. Muzumdar and ors. vs. Gujarat State Fertilizer Co. Ltd. and anr. [2005 ALL MR (Cri) 1580 (S.C.)]

(b) N. Rangachari vs. Bharat Sanchar Nigam Ltd. [2007 ALL MR (Cri) 1437 (S.C.)].

6. The complaint filed by the respondent no.1 has impleaded the present petitioner as accused no.2 and he has been shown as the Chairman of accused no.1-company, whereas the averments made in paras 1, 2, 3 and 4 are relevant for the present considerations

and hence are reproduced as under:-

"(1) I say that at the request of Vitara Chemicals Ltd. Complainant discounted a 2 Bills drawn by KENTTY CHEMICALS PVT. LTD. bearing No.KC/286/98/99 & KC/350/98/99 for Rs.25,94,961.60 & Rs.10,56,000.00 dated 3.9.98 & 12.10.98.

(2) Towards the satisfaction of liability arising out of discounting of Bill No. KC/286/98/99 dated 3.9.98 the Accused No.1 by their letter dated 10.9.1998 forwarded to the Complainant the post dated cheque of Rs.25,94,961.00 in favour of Complainant drawn on ANZ-Grindlays Bank S.G. Marg Branch, Mumbai 400 002 bearing 303962 dated 10.12.1998. The Complainant crave leave to refer to and rely upon the said letter dated 10.9.98. Hereto annexed and marked as Exhibit "A" is copy of the said cheque dated 10.12.1998.

(3) Towards the satisfaction of liability

arising out of discounting of Bill No.KC/350/98/99 dated 12.10.98 the Accused No.1 by their letter dated 14.10.1998 forwarded to the Complainant the post dated cheque of Rs.10,56,000.00 in favour of Complainant drawn on ANZ Grindlays Bank S.G. Marg branch, Mumbai 400 002 bearing 290247 dated 12.01.1999. The Complainant crave leave to refer to and rely upon the said letter dated 14.10.98. Hereto annexed and marked as Exhibit "B" is copy of the said cheque dated 12.01.1998.

(4) The said cheques were deposited by the Complainant with their banker, ANZ Grindlays Bank, Bandra Branch. The said cheques when presented to the bankers of Accused No.1 i.e. ANZ Grindlays Bank S.G. Marg branch were returned dishonoured on 13.1.1998 with remark "Funds Insufficient". Hereto annexed and marked as Exhibit "C" the dishonoured memo."

7. It is thus clear that the first cheque bearing No. 303962 for an amount of Rs. 25,94,961/- was

dated 10/12/1998 and the second cheque bearing No.290247 for an amount of Rs.10,56,000/- was dated 12/1/1999. Both the cheques were forwarded to the complainant by the accused no.1-company vide its letters dated 10/9/1998 & 14/10/1998 respectively. It is thus clear that the liability for payment of dues was accepted by the accused no.1-company vide its letters dated 10/9/1998 & 14/10/1998 and, therefore, the two dishonoured post dated cheques were forwarded to the complainant-company. The balance-sheet for the accounting year 1998-99 submitted by the learned counsel for the petitioner does show that his resignation was accepted as the Chairman of the Company on 31/10/1998 and the accused no.3 took over as the Chairman of the said Company from 1/11/1998. However, this fact by itself will not be a reason to hold that the petitioner cannot be prosecuted in the complaint filed by the respondent no.1 way back on 4/3/1999.

8. In the case of N. Rangachari (Supra), the Apex Court in para 18 observed as under:-

"18. In the case on hand, reading the

complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the two dishonoured cheques were issued by the company, the appellant and another were the Directors of the company and were incharge of the affairs of the company. it is not proper to split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the appellant and the other are not alleged to be persons incharge of the affairs of the company. Obviously, the complainant refers to the point of time when the two cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. We have no hesitation in overruling the argument in that behalf by the learned Senior Counsel for the appellant."

. In the case of K. Srikanth Singh (Supra), the defence was that the petitioner therein was not a Director of the company at the time of issuance of the cheque. In the case of Ashok Yeshwant Badave (Supra)

the Supreme Court held that a post dated cheque is not payable till the date which is shown thereon arrives and will become cheque on the said date and prior to that date the same remains bill of exchange. However, as held in the case of N. Rangachari, the liability for the payment of debt is accepted on the date the cheques are issued and if the accused was, on evidence, held to be incharge and responsible for the administration of the accused-company on the date the cheques were issued, he could be held to be guilty for the dishonour of such cheques.

9. The material, prima facie, shows that in the instant case the petitioner was the Chairman of the accused no.1-company on the date the dishonoured cheques were forwarded to the complainant. In addition, there are some aggravating circumstances, namely, the order of process was issued on 30/3/1999 and for the first time on 2/3/2002 an application for recall of the process was made by the petitioner before the learned Metropolitan Magistrate. It is more than eight years that the complaint has been pending. The accused no.3 Shri Umesh Bhatia, who was the Managing Director of the accused no.1-company had

taken over as a Chairman from 1/11/1998 and he appears to be a family member of the petitioner. At no point of time even after receiving the statutory notice as well as the order of process issued by the learned Metropolitan Magistrate that the accused no.1-company or any of the accused have accepted the financial liability arising out of the dishonoured cheques and pay to the complainant. It is also clear that accused no.5 had resigned from the service of the accused no.1-company as is clear from the balance-sheet for the accounting year 1998-99. In the facts of this case, it would not be safe to invoke the inherent powers under Section 482 of Cr.P.C. and set aside the order of process issued against the present petitioner. In this regard I may usefully refer to a recent decision of a three Judge Bench in the case of Manjula Sinha vs. State of U.P. and ors. **[2007 AIR SCW 4555]**. Their Lordships referred to the earlier decisions in the case of Janata Dal vs. H.S. Chowdhary **[1993 AIR SCW 248]** and Raghubir Saran (Dr.) vs. State of Bihar [AIR 1864 SC 1] and observed in para 9 as under:-

"9. As noted above, the powers possessed

by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case, where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage."

10. In the premises, there is no case made out to quash the order of issuance of process against the petitioner and, therefore, this petition must fail at

the threshold and the same is hereby rejected summarily. Trial of the complaint is expedited.

. Writ to go to the trial court forthwith.

(B.H. Marlapalle,J.)